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IN THE

Supreme Court of the United States

October Term, 1970
No. [redacted] 119

CORA MCKINNON,

Appellant,

vs.

WILLIE BROWN,

Appellee.

On Appeal From the Superior Court of the State of California for the County of Riverside (Appellate Department).

JURISDICTIONAL STATEMENT.

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SUBJECT INDEX

	Page
Opinion Below	1
Jurisdiction	2
Statutes Involved	3
Statement of the Case and How the Federal Question Is Presented	4
The Question Is Substantial	12
Conclusion	15
Appendix A. Judgment of the Municipal Court; Decision on Appeal Rendered by Superior Court and Denial of Motion for Certification.	
Appendix B. Pertinent Statutes, Rules and Constitutional Amendments Involved.	

TABLE OF AUTHORITIES CITED

Cases — Pae

Alden v. Mayfield, 33 Cal. App. 724, 166 Pac. 382 5

Armstrong v. Manzo, 14 L. Ed. 2d 62, 380 U.S. 545, 85 S. Ct. 1187 12

Aspen Mining & Smelting Co. v. Billings, Colo., 14 S. Ct. 4, 150 U.S. 31, 37 L. Ed. 986 11

Edwards v. California, 314 U.S. 160, 86 L. Ed. 119, 62 S. Ct. 164 3

Finn v. Chase Nat. Bank of City of New York, 26 N.Y.S. 2d 771, 176 Misc. 127 12

Goodrich v. Ferris, 29 S. Ct. 580, 214 U.S. 71, 53 L. Ed. 914 .... 9, 12

Hyman v. Ross, 84 N.Y.S. 2d 102, aff'd 87 N.Y.S. 2d 422 13

McLaughlin v. McLaughlin, 133 N.J. Eq. 72, 20 A. 2d 49 12

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 98 L. Ed. 583, 74 S. Ct. 396 3

Robins v. Robert Lawrence Electronics Corp., 84 N.Y.S 2d 99 13

Roller v. Holly, 20 S. Ct. 410, 176 U.S. 398, 44 L. Ed. 520 .... 9, 12

Shroeder v. New York, 371 U.S. 208, 9 L. Ed. 2d 255, 83 S. Ct. 279, 89 A.L.R. 2d 1398 12

Snidach v. Family Finance Corpporation, 89 S. Ct. 1820, 395 U.S. 337, 23 L. Ed. 349 8

State v. Mueller, 388 S.W. 2d 53 13

Steinhart v. Superior Court, 137 Cal. 575, 70 Pac. 629 9

Page

System Meat Company v. Steward, 122 N.W. 2d 1, 175 Neb. 387 12

United States v. Seminole Nation, 57 S. Ct. 283, 299 U.S. 417, 81 L. Ed. 316 11

Rules

California Rules of Court, Rule 63 .....3, 4

California Rules of Court, Rule 105 .....4, 5, 9

California Rules of Court, Rule 107 10

California Rules of Court, Rule 122 7

California Rules of Court, Rule 127 8

California Rules of Court, Rule 501 .....4, 5

Statutes

California Code of Civil Procedure, Sec. 77 .....2, 4

California Code of Civil Procedure, Sec. 89 .....2, 3

California Code of Civil Procedure, Sec. 437 .....4, 5

California Code of Civil Procedure, Sec. 911 .....3, 4

California Code of Civil Procedure, Sec. 1161 ....2, 3

California Code of Civil Procedure, Sec. 1166 .....2, 3

California Code of Civil Procedure, Sec. 1167 ..2, 3, 5 .....10, 11, 12, 15

California Code of Civil Procedure, Sec. 1169 ....2, 3

California Code of Civil Procedure, Sec. 1174 ..2, 3, 5

California Constitution, Art. VI, Sec. 5 .....2, 4

California Constitution, Art. VI, Sec. 11 .....2, 3, 4

United States Code, Title 28, Sec. 1257(2) 3, 4

United States Code, Title 28, Sec. 2101(c) 3, 4

United States Constitution, Fourteenth Amendment 3, 10, 13

Textbook

6 American Law Reports 3d, pp. 177, 186 14

IN THE

Supreme Court of the United States

October Term, 1969

No. .....

CORA MCKINNON,

Appellant,

vs.

WILLIE BROWN,

Appellee.

On Appeal From the Superior Court of the State of California for the County of Riverside (Appellate Department).

JURISDICTIONAL STATEMENT.

Appellant, Cora McKinnon, appeals from the judgment of the Superior Court of the State of California for Riverside County (Appellate Department), entered December 18, 1969, and made final on December 30, 1969, affirming a judgment of the Municipal Court of the Riverside Judicial District, State of California. Appellant submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below.

Neither the judgment of the Court of first instance below, nor the decision on appeal affirming that judgment was accompanied by an opinion. Nor was the appellate court's denial of appellant's motion for trans-

fer and certification to the Court of Appeal of California accompanied by an opinion.

The judgment of the Municipal Court; the Decision on Appeal rendered by the Superior Court (Appellate Department); and the Denial of the Motion for Certification to the State of California Court of Appeal, Fourth Appellate District, Division Two, are set forth in Appendix A attached hereto.

Jurisdiction.

The action below was brought in the Municipal Court against Appellant by Appellee relying on California Code of Civil Procedure Sections 1161, 1166, 1167, 1169, and 1174. The original jurisdiction of the Municipal Court is conferred by California Constitution, Article VI, Section 11 and California Code of Civil Procedure Section 89. The judgment of the Municipal Court was entered on June 17, 1969, and notice of appeal was filed in that court on July 16, 1969. The jurisdiction of the Superior Court (Appellate Department) to review that decision by direct appeal is conferred by California Constitution, Article VI, Section 5 and California Code of Civil Procedure 77.

The decision on appeal rendered by the Superior Court (Appellate Department) was entered on December 19, 1969, and was made final on December 30, 1969 by virtue of its denial of Appellant's motion for transfer and certification to the State of California Court of Appeal, Fourth Appellate District, Division Two. The jurisdiction of the Superior Court (Appellate Department) to transfer and certify to the State Court of Appeal is conferred by California Constitution, Article VI, Section 11; California Code of Civil Pro-

cedure Section 911, and California Rules of Court, Rule 63. The jurisdiction of the Supreme Court of the United States to review the Superior Court decision on appeal by direct appeal is conferred by Title 28, United States Code, Sections 1257(2) and 2101(c). The following decisions sustain the jurisdiction of the Supreme Court of the United States to review the judgment on direct appeal in this case:

Edwards v. California, 314 U.S. 160, 86 L. Ed. 119, 62 S. Ct. 164;

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 98 L. Ed. 583, 74 S. Ct. 396.

Statutes Involved.

California Code of Civil Procedure Sections 1161, 1166, 1167, 1169 and 1174 referring to unlawful detainer actions are set forth in Appendix B attached hereto, it being Section 1167 which is challenged herein as invalid and repugnant to the due process clause of the Federal Constitution; the Fourteenth Amendment of the United States Constitution is also set forth in Appendix B.

State and Federal Statutes, Articles of the State Constitution, and rules of State Court relating to jurisdiction as stated in the JURISDICTION paragraphs (*supra*) are also set forth in Appendix B attached hereto. With regard to jurisdiction of the Municipal Court: California Constitution, Article VI, Section 11 and California Code of Civil Procedure Section 89 are set forth in Appendix B.

With regard to jurisdiction of the Superior Court, Appellate Department, to review the Municipal Court

decision, California Constitution, Article VI, Section 5 and California Code of Civil Procedure 77, are, set forth in Appendix B.

With regard to jurisdiction of the Superior Court, Appellate Department, to transfer and certify to the State Court of Appeal, California Constitution, Article VI, Section 11; California Code of Civil Procedure Section 911, and California Rules of Court, Rule 63 are set forth in Appendix B.

With regard to jurisdiction of the Supreme Court of the United States to review the Superior Court decision, Title 28, United States Code, Sections 1257 (2) and 2101(c), are set forth in Appendix B.

With regard to complexities facing a defendant who wishes to file an Answer, California Code of Civil Procedure 437 and California Rules of Court, Rule 501, are set forth in Appendix B.

Statement of the Case and How the Federal Question Is Presented.

I.

Appellant, a woman who worked as a hospital clerk and who had several grandchildren and children living with her, had been the tenant of appellee for over six years at residential real property in the City and County of Riverside, State of California, when on June 13, 1969, a Friday, while still in possession, she was served with a "three-day" summons and a complaint alleging a single count for unlawful detainer brought by appellee (as Plaintiff) against appellant (as defendant) in the Municipal Court of the Riverside Judicial District (case number 31171), County of Riverside, State

of California. California Code of Civ. Procedure Section 1167 purports to allow an unlawful detainer summons to require an answer by defendant within three days of service or the plaintiff may apply to the Court for entry of defendant's default and for the relief prayed for in the complaint.

Appellant did not deny that rent was owing, but in her proposed ANSWER, she wished to *deny* that her continuance in possession was "willful, intentional, deliberate and obstinate", which characterizations the appellee had alleged in the complaint. Otherwise, she ran the risk of being assessed for treble damages, which were sought in the complaint. California Code of Civil Procedure Section 1174 permits the Court the discretion of awarding treble damages in unlawful detainer cases. Case law in California permits the award of treble damages where the continuance in possession is "willful, intentional, deliberate and obstinate." *Alden v. Mayfield* (1917), 33 Cal. App. 724, 166 Pac. 382.

Had appellant attempted a "do-it-herself" Answer, she would have run into the complexities of California statutes and Rules of Court for written pleadings in the Municipal Court. The technicalities she would have run into are illustrated by California Code of Civil Procedure Section 437 relating to Answers, and California Rules of Court, Rule 501, relating to the form of papers presented for filing. (Please see Appendix B.)

Appellant could not afford a private attorney, and so had to rely on free legal services furnished by the Legal Aid Society of Riverside County. That Society's office was closed on Saturday, June 14, 1969, and on Sunday, June 15, 1969, and the Municipal Court in

which she was required to file her Answer was also closed on those two days. After she completed her work shift on the afternoon of Monday, June 16, 1969, appellant applied for free legal service at said Society, but she was unable to see an attorney there until shortly before the end of the day. She and the Society's attorney immediately on said day orally petitioned the judge in charge of Law and Motion at said Court at about 5:00 p.m., as said Court was closing for the day, for a short extension of time in which to file a written answer, but the oral petition was denied. The attorney for appellee also denied an identical request on the same afternoon.

On Tuesday, June 17, 1969, appellee had the trial Court enter the default of appellant, and upon *ex parte* application to the said Court, obtained a default judgment against appellant, which judgment included not only the sum of $330.00 as damages for the rent claim but also the sum of $200.00 as partially trebled damages.

On Wednesday, June 18, 1969, appellant attempted to file her Answer but it was refused, the default judgment having already been entered the day before.

Appellee then proceeded to carry out post-judgment proceedings, such as obtaining an order for appearance (examination) of judgment debtor and a writ of execution on some of appellant's earnings that were still in the hands of her employer. Because of the peculiar wording of the California statute concerning garnishment of wages and because of the peculiarities of the bookkeeping system of appellant's employer, which happened to be the County of Riverside, on one occasion appellant received only $30.30 in lieu of her usual every-

two-weeks pay, while appellee successfully garnished the balance of appellant's earnings, which balance consisted of $107.36, which had been in the hands of her employer.

II.

On July 16, 1969, appellant filed her Notice of Appeal from the Municipal Court judgment, which had been rendered on June 17, 1969, which was less than thirty days before. This was timely in that it was within the thirty days allowed for appeals from Municipal Courts to the Superior Court (Appellate Department) as provided for in California Rules of Court, Rule 122.

On July 24, 1969, Appellant filed in the Municipal Court a motion to stay proceedings, in which motion reference was made to the shortness of time from the date of service of the Summons (June 13, 1969) to the date of entry of default and default judgment (June 17, 1969) a fact ". . . affording Defendant grounds for appeal based on a denial of due process with respect to the time within which a Defendant has for the preparation of his or her case." (p. 2, lines 2 through 4, Motion to Stay Proceedings and Memorandum of Points and Authorities in Support thereof, and Declarations of William B. Eley and Cora McKinnon in Support Thereof.) The motion to stay proceedings was denied because appellant was unable to post an appeal bond.

On September 8, 1968, Appellant filed in the Municipal Court a Notice of Motions for Recall and Quashal of Writ of Execution and for Order Vacating Order for Appearance of Judgment Debtor, or in the Alternative for Modification of Said Writ and

Said Order for Appearance. The Memorandum of Points and Authorities accompanying the Notice of Motions stated on the second page, lines 14 through 19: "A statute that fails to provide an opportunity to be heard before a disposition of essential property rights is invalid as being a contravention of the due process clause." *Sniadach v. Family Finance Corporation* (1969), 89 S. Ct. 1820, 395 U.S. 337, 23 L. Ed. 349, was among the citations accompanying the Notice of Motions. The Supplemental Points and Authorities filed on September 17, 1969, in support of the motions included extensive citations and arguments concerning due process as applied to this case.

In the Municipal Court, the Appellant elected to proceed by settled statement in lieu of a Reporter's Transcript and filed Appellant's Propposed Settled Statement (under Rule 127 of the California Rules of Court). Appellant and appellee then stipulated that the Appellant's Proposed Settled Statement (under Rule 127 of the California Rules of Court) was deemed to be the Engrossed Settled Statement on Appeal, and the Municipal Court so ordered on September 29, 1969.

Upon appellee's levy of execution on some of appellant's earnings, appellant asserted a Claim of Exemption, but the claim was denied. Petitions by Appellant for extraordinary writs directed against the Municipal Court were denied by both the Superior Court *not* sitting as an appellate department and by the State Court of Appeal, Fourth Appellate District, Division Two. The latter, however, in denying the petition for a Writ of Probation/Mandate, did so without prejudice to Appellant's right "to serve (sic) extraordinary relief in the Appellate Department of the Superior

Court of Riverside County." (*Cora McKinnon v. Municipal Court, Riverside Judicial District,* 4 Civ. No. 10024, Court of Appeal—State of California, Fourth Appellate District, Division Two, in an otherwise unreported minute order filed therein on October 17, 1969.)

Appellant then in the Superior Court Appellate Department filed (1) Petition for Writ of Supersedeas and Memorandum of Points and Authorities and (2) Petition to Proceed *in Forma Pauperis* in re Petition for Writ of Supersedeas and Points and Authorities and (3) supporting declarations. Both petitions were granted.

Appellant's Opening Brief in the Superior Court Appellate Department was filed November 10, 1969, which was timely Pursuant to California Rules of Court Rule 105. It cited numerous "due process" cases, including quotations as follows:

"It is manifest that requirement of notice would be of no value whatever, unless such notice were reasonable and adequate for the purpose." *Roller v. Holly,* 20 S. Ct. 410; 176 U.S. 398, 409; 44 L. Ed. 520, 525.

". . . the power of a state legislature to prescribe length of notice is not absolute . . ." *Goodrich v. Ferris,* 29 S. Ct. 580; 214 U.S. 71, 81; 53 L. Ed. 914, 918.

The brief invited the Superior Court Appellate Department to consider the principle that where a statute is susceptible of two constructions, one of which will render it constitutional, and the other unconstitutional, the Court will adopt the construction which will render it constitutional.

Steinhart v. Superior Court (1902), 137 Cal. 575, 579; 70 Pac. 629.

The brief invited the Court to hold California Code of Civil Procedure Section 1167 constitutional by construing the "three days" to mean three *judicial* days, in other words, days upon which the Courts would be open, and, by implication, days upon which attorneys' offices would be open. Such a construction would have required the Superior Court to order a reversal, as appellant *did* tender for filing her Answer on the third *judicial* day following service on her of the summons and complaint.

The Superior Court Appellate Department in affirming the judgment below, however, impliedly upheld the validity of California Code of Civil Procedure 1167, as applied to Appellant, while construing the three days to mean three "calendar" days. Thus, as applied to appellant, the statute is repugnant to the due process concepts of reasonable notice and opportunity to be heard inherent in the Fourteenth Amendment of the federal Constitution.

The entry of the Superior Court Appellate Department judgment was on December 19, 1969. The finality of the judgment in the Superior Court Appellate Department would have been seven days after entry of judgment pursuant to California Rules of Court, Rule 107, except that on December 24, 1969, before the expiration of the seven days, Appellant filed a Petition for Certification to the Court of Appeal for the Fourth Appellate District, State of California, Pursuant to (California) Rule of Court No. 63. The petition was denied on December 30, 1969, and it was thus on December 30, 1969, that the decision on appeal in the Superior Court Appellate Department became the

final judgment of the highest state Court in which a decision could be had.

United States v. Seminole Nation (1937), 57 S. Ct. 283, 299 U.S. 417, 81 L. Ed. 316;

Aspen Mining & Smelting Co. v. Billings, Colo. (1893), 14 S. Ct. 4, 150 U.S. 31, 37 L. Ed. 986.

III.

The following questions are presented by this appeal:

Is the requirement of the California statute, Code of Civil Procedure, Section 1167, that a defendant-tenant in an alleged unlawful detainer case appear and answer within three days after service of summons—or else suffer an ex-parte default judgment obtained by plaintiff-landlord against defendant—repugnant to the due process clause of the United States Constitution, as it relates to notice and an opportunity to be heard, on the premise that three days is too short a time for a defendant to seek and find an attorney; consult with the attorney about the case, and have the attorney prepare and file a written pleading in form pursuant to rule of Court? And is the state statute particularly repugnant as applied to appellant, on whom service was made on a Friday, immediately prior to Saturday and Sunday, on which two days the trial court and potentially available attoreny offices were closed to appellant and to the public in general, thus leaving appellant with only one full day in which to take the steps necessary to secure her opportunity to be heard?

The Question Is Substantial.

The highest California state court in which any decision could be had has affirmed the trial court judgment below which depended on a construction of California Code of Civil Procedure Section 1167 to the effect that said code section was a valid state statute as applied to Appellant. California is thus saying that an unlawful detainer case defendant, such as appellant, need be given only three days after service in which to file a written answer pursuant to rule of court, or suffer imposition of a default judgment, even if the first two days of the three are Sundays, holidays or the like. The one remaining day of the three is too short a time to meet due process requirements of the Federal Constitution as related to reasonable notice and an opportunity to be heard. Thus the decision below is clearly wrong and should be reversed.

Armstrong v. Manzo, 14 L. Ed. 2d 62, 380 U.S. 545, 85 S. Ct. 1187;

Shroeder v. New York, 371 U.S. 208, at 212, 9 L. Ed. 2d 255, 83 S. Ct. 279, 89 A.L.R. 2d 1398;

Roller v. Holly, 44 L. Ed. 520 at 525, 176 U.S. 398 at 409, 20 S. Ct. 410;

Goodrich v. Ferris, 53 L. Ed. 914 at 918, 214 U.S. 71, at 81, 29 S. Ct. 580;

System Meat Company v. Steward, 122 N.W. 2d 1, 175 Neb. 387;

McLaughlin v. McLaughlin, 133 N.J. Eq. 72, 20 A. 2d 49;

Finn v. Chase Nat. Bank of City of New York, 26 N.Y.S. 2d 771, 176 Misc. 127;

Hyman v. Ross, 84 N.Y.S. 2d 102, aff'd 87 N.Y.S. 2d 422;

Robins v. Robert Lawrence Electronics Corp., 84 N.Y.S. 2d 99.

The issue of length of time for response to legal process is important to many persons throughout the United States, as there obviously are many landlords and tenants in all of the states.

Among the more than 20,000,000 natural persons residing in the State of California, there are without question many thousands of them who do not own their own homes but who rather are tenants, many of them not by choice, but because they are too impecunious. Nevertheless, they are human beings with feelings for their respective homes, however humble. (Please see Appendix B for quotation concerning the meaning of "home" in *State v. Mueller* (1964), 388 S.W. 2d 53, 57.)

California and certain other states provide for legal process when a landlord wishes to remove a tenant who does not remove himself. A state's legal process, however, should not be repugnant to the due process clause of the Fourteenth Amendment of the Federal Constitution. A notice period of reasonably sufficient length is necessary to afford a reasonable opportunity to be heard. Too short a period deprives a person of a hearing before the taking of his property, whether the property be his home or his money. This is a question of great substance in all states which require legal process before the removal of a tenant. (U.S. Constitution, Amendment 14.)

Possibly an equally substantial impact of the United States Supreme Court's granting plenary consideration with oral and written argument on the merits may be had on tenants and landlords in states that still do not give tenants the right to legal process in unlawful retainer disputes. Some states allow reasonable force by a landlord to remove a tenant who is not entitled to continue in possession. Annotation: *Right of Landlord Legally Entitled to Possession to Dispossess Tenant Without Legal Process*, ALR 3d 177. The number of jurisdictions cited in the annotation is almost evenly divided pro and con, but the author thereof believes there is "an increasing number of jurisdictions upholding what seems to be the modern doctrine that a landlord otherwise entitled to possession must, on the refusal of the tenant to surrender the leased premises, resort to the remedy given by law to secure it; otherwise he would be liable in damages for using force or deception to regain possession." 6 A.L.R. 3d 177, 186.

Violence appears to be increasing throughout the country, and it is important that less advantaged people feel fair treatment at the hands of more advantaged persons. *Report of the National Advisory Commission on Civil Disorders*, c. 1968, The New York Times Company, New York.

With the specter of a national housing shortage, a burgeoning population, financial inability of many persons to purchase existing available housing because of inflationary prices, high interest rates, and growing unemployment haunting the nation, the stresses and strains in relationships between landlords and tenants cry out for guidance by the United States Supreme Court in the critical area of landlord-tenant disputes,

which almost invariably lead to attempted eviction of the tenant by the landlord, whether by legal process or physical force.

Conclusion.

It is submitted that the decision of the Superior Court of the State of California for the County of Riverside (Appellate Department) fails to recognize that California Code of Civil Procedure Section 1167 is repugnant to the due process clause of the Federal Constitution as it relates to notice and an opportunity to be heard. We believe that notice and an opportunity to be heard are of special importance with respect to home-dwellers subjected to the unlawful detainer statutes of California in that the absence of adequate notice and opportunity to be heard may lead to eviction from and permanent loss of one's home and treble damages assessed against a home-dweller. We believe that the questions presented by this appeal are substantial and of great public importance.

Respectfully submitted.

WILLIAM BOONE ELEY, ESQ.,
DAVID ARTHUR BINDER, ESQ.,
Counsel for Appellant.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

TITLE:		DATE & DEPT.	NUMBER:
WILLIE BROWN Respondent vs CORA McKINNON Appellant		12-30-69 2 Appellate	A-281
COUNSEL:		REPORTER:	
Boyd Briskin	Legal Aid Society by: W. Eley	None	

PROCEEDING:
Petition for Certification - Denial

Petition for Certification, filed herein on December 24, 1969, is hereby denied.

1	R/A		CAL.	2	ATTY(S).		

GARRETT McBLETT, Judge

Melzer, Clerk

FORM NO. 171, 2/64

MINUTES OF SUPERIOR COURT

FILED
RIVERSIDE COUNTY
DEC 19 1969
DONALD D. SULLIVAN, Clerk
By C. Melzer Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE
(APPELLATE DEPARTMENT)

WILLIE BROWN
Plaintiff & Respondent
vs
CORA McKINNON
Defendant & Appellant

Case No. A-281
DECISION ON APPEAL

The judgment of the Municipal Court of Riverside Judicial District in the above-entitled case is affirmed.

The writ of supersedeas heretofore issued on November 28, 1969, is continued in force and effect until December 26, 1969, to afford Petitioner-Appellant full opportunity to seek further judicial review or relief.

Respondent awarded costs on appeal.

Dated: December 19, 1969.

John G. Gabbert

WARREN E. SLAUGHTER
Judges of the Appellate Court

Form No. 112.5 (4-68)

MUNICIPAL COURT
RIVERSIDE JUD. DIST.

1969 JUN 17 PM 1:59

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BY _____ DEPUTY

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OV3-4610

Attorney(s) for Plaintiff

IN THE MUNICIPAL COURT OF RIVERSIDE JUDICIAL DISTRICT
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

WILLIE BROWN,
Plaintiff(s)

vs.

CORA McKINNON, et al.,
Defendant(s)

No. 31171

JUDGMENT BY DEFAULT
BY COURT
(UNLAWFUL DETAINER)

In this action the Defendant, CORA McKINNON having been regularly served with summons and copy of complaint, having failed to appear and answer the complaint of Plaintiff(s) within the time allowed by law, and the default of said Defendant(s) having been duly entered, upon application of Plaintiff(s) to the Court, and after having heard the testimony and considered the evidence, the Court ordered the following judgment:

~~That the amount of rent due Plaintiff is $_____, and assesses the damages for the unlawful detainer at $_____, and orders that judgment be for three times said amounts, to-wit, $_____.~~

WHEREFORE, IT IS ORDERED AND ADJUDGED that the Defendant is guilty of unlawful detainer of the premises described in the complaint, and that Plaintiff(s) be restored to the possession of said premises; that the lease or agreement under which said property is held be, and the same is hereby forfeited; that Plaintiff, WILLIE BROWN

have and recover from said Defendant, CORA McKINNON

the sum of $ 550.00, together with costs taxed in the sum of $18.10; that execution issue herein at the time and in the manner provided by law; that the said property is situate in the Riverside Judicial District, County of Riverside, State of California, and is described as follows, to-wit: 4425 Dwight Street, Riverside, California

Done in open Court on June 17, 1969

F. M. Rich
Judge

I hereby certify this to be a true copy of the Judgment in the above case.

Entered in Minute Docket Book No. 31171 R. W. FOWLER, Clerk

Page One By M. E. Johnson, Deputy

on June 17, 1969.

JUDGMENT BY DEFAULT BY COURT — UNLAWFUL DETAINER

EXHIBIT 4

STD CT FORM CIV 52, 7/65

Title 28, United States Code, Section 1257. Public Laws, June 25, 1948, Chapter 646, 62 United States Statutes 929 provides:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Title 28, United States Code, Section 2101. Public Laws June 25, 1948, Chapter 646, 62 United Statutes 961 and 962, and Public Laws Act, May 24, 1949, Chapter 139, Section 106, 63 United States Statutes 104 provide:

"(a) A direct appeal to the Supreme Court from any decision under Sections 1252, 1253, and 2282 of this title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days

after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

"(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceedings, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

"(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for with ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days. . . ."

U. S. CONSTITUTION

Amendment 14

(Adopted July 28, 1868)

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Constitution Article VI, Section 5 provides:

"Each county shall be divided into municipal court and justice court districts as provided by statute, but a city may not be divided into more than one district. Each municipal and justice court shall have one or more judges. . . .

"The Legislature shall provide for the organization and prescribe the jurisdiction of municipal and justice courts. It shall prescribe for each municipal court and provide for each justice court the number, qualifications, and compensation of judges, officers, and employees."

California Constitution, Article VI, Section 6 provides:

"The Judicial Council consists of the Chief Justice as chairman and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, 3 judges of municipal courts, and 2 judges of justice courts, each appointed by the chairman for a 2-year term; 4 members of the State Bar appointed by its governing body for 2-year terms; and one member of each house of the Legislature appointed as provided by the house. . . .

"To improve the administration of justice the council shall survey judicial business and made recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute. . . ."

California Constitution, Article VI, Section 11 provides:

"The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction and in other causes prescribed by statutes.

"Superior courts have appellate jurisdiction in causes prescribed by statute that arise in municipal and justice courts in their counties.

"The Legislature may permit appellate courts to take evidence and make findings of fact when jury trial is waived or not a matter of right."

California Code of Civil Procedure, Section 77 provides.

(a) "There is an appellate department of the superior court in every county and city and county which has one or more municipal courts. . . .

"(d) The appellate department in a county with three or more judges of the superior court shall consist of three judges. . . .

"(f) The concurrence of two judges of the appellate department of the superior court shall be necessary to render the decision in every case in, and to transact any other business except such as may be done at chambers by the presiding judge of such department. The presiding judge shall convene such department at such times as may be necessary. He shall also supervise its business and transact such thereof as may be done at chambers.

"(g) Every appellate department under this section shall have jurisdiction on appeal from the municipal and justice courts within the county or city and county

in all cases in which an appeal may be taken to the superior courts as is now or may hereafter be provided by law except such appeals as require a retrial in the superior court. The powers of each appellate department shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the superior courts.

"(h) The Judicial Council may promulgate rules, not inconsistent with law, governing the practice and procedure and the disposition of the business of such appellate departments, or of each class thereof as provided in subdivision (b), (c) and (d) of this section, respectively."

California Statutes, 1955, chapter 527, Sec. 1;
Am. Stats. 1961, chapter 937, Sec. 1.

California Code of Civil Procedure, Section 89 provides:

"1. Municipal courts shall have original jurisdiction of civil cases and proceedings as follows:

"(a) In all cases at law in which the demand, exclusive of interest, or the value of the property in controversy, amounts to five thousand dollars or less, except cases which involve the legality of any tax, impost, assessment, toll or municipal fine, except such courts shall have jurisdiction in actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant. . . .

"(d) In all proceedings in forcible entry or forcible or unlawful detainer, where the rental value is six hundred dollars or less per month, and where the whole amount of damages claimed is five thousand dollars or less. . . .

"(i) In all actions under Section 720 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor, where the interest claimed adversely is of a value not exceeding five thousand dollars or the debt denied does not exceed five thousand dollars.

"2. Each municipal court shall have jurisdiction of all cases in equity to try title to personal property when the amount involved is not more than five thousand dollars and of all cases in equity when pleaded as defensive matter, in any case properly pending in such municipal court."

California Statutes 1968, chapter 503, Sec. 1.

California Code of Civil Procedure, Section 437 provides:

"The answer of the defendant shall contain:

"1. A general or specific denial of the material allegations of the complaint controverted by the defendant.

"2. A statement of any new matter constituting a defense or counterclaim.

"Except in justice courts, if the complaint be verified, the denial of the allegations controverted must be made positively, or according to the information and belief of the defendant. If the defendant has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer, and place his denial on that ground. The denials of the allegations controverted may be stated by reference to specific paragraphs or parts of the complaint; or by express admission of certain allegations of the complaint with a general de-

nial of all of the allegations not so admitted; or by denial of certain allegations upon information and belief, or for lack of sufficient information or belief, with a general denial of all allegations not so denied or expressly admitted. If the complaint be not verified, a general denial is sufficient, but only puts in issue the material allegations of the complaint."

California Statutes, 1951, chapter 1737, Sec. 51, vol. 2, p. 4101.

California Code of Civil Procedure Section 911 provides:

"A court of appeal may order any case on appeal within the original jurisdiction of the municipal and justice courts in its district transferred to it for hearing and decision as provided by rules of the Judicial Council when the superior court certifies, or the court of appeal determines, that such transfer appears necessary to secure uniformity of decision or to settle important questions of law. . . .

"A court to which any case is transferred pursuant to this section shall have similar power to review any matter and make orders and judgments as the superior court would have in such case. . . ."

California Statutes, 1968, Chapter 385, Sec. 2, Vol. 1, p. 815.

California Code of Civil Procedure Section 1161 provides:

"A tenant of real property, for a term less than life, or the executor or administrator of his estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:

"1. When he continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him; provided such expiration is of a nondefault nature however brought about without the permission of his landlord, or the successor in estate of his landlord, if any there be; including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, or licensee and the relation of master and servant or employer and employee or principal and agent or licensor and licensee has been lawfully terminated or the time fixed for such occupancy by the agreement between the parties has expired; but nothing in this subdivision contained shall be construed as preventing the removal of such occupant in any other lawful manner; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the Civil Code.

"2. When he continues in possession, in person or by subtenant, without the permission of his landlord, or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him and if there is a subtenant in actual occupation of the premises, also upon such subtenant.

"Such notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand

of possession or notice to quit by the landlord or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord or successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year,

"3. When he continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not assign or sublet, than the one for the payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him; and if there is a subtenant in actual occupation of the premises, also, upon such subtenant. Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his subtenant, demanding the performance of the violated conditions or covenants of the lease.

"A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of the premises let to a subtenant or held by a servant, employee, agent, or licensee, in case of his unlawful detention of the premises underlet to him or held by him.

"4. Any tenant, subtenant, or executor or administrator of his estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using such premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provision of this chapter.

"5. When he gives written notice as provided in Section 1946 of the Civil Code of his intention to terminate the hiring of the real property, or makes a written offer to surrender which is accepted in writing by the landlord but fails to deliver up possession at the time specified in said written notice, without the permission of his landlord, or the successor in estate of the landlord, if any there be."

Statutes of California, 1960 and 1961, Regular Session 1961, Chapter 782, Volume 1, pages 2044, 2045.

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California Code of Civil Procedure Section 1166 provides:

"The plaintiff, in his complaint, which shall be verified, must set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry or forcible or unlawful detainer, and claims damages therefor. In case the unlawful detainer charged is after default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint, a summons must be issued thereon."

Statutes of California, Thirty-Seventh Session of the Legislature, 1907, Chapter 257, pages 322, 323.

California Code of Civil Procedure Section 1167 provides:

"The summons must require the defendant to appear and answer within three days after the service of the summons upon him, and must notify him that if he fails to so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint.

"In all other respects the summons, or any alias summons in such proceedings, must be issued and served and returned in the same manner as summons in a civil action."

Statutes of California, Thirty-Seventh Session of the Legislature, 1907, Chapter 257, page 323.

California Code of Civil Procedure Section 1169 provides:

"If at the time appointed any defendant served with summons does not appear and defend, the Clerk, or the judge, if there be no clerk, upon application of the plaintiff, must enter the default of such defendant or defendants, and thereafter the plaintiff may apply to the court for the relief demanded in the complaint, including the costs, against such defendant, or defendants or against one or more of such defendants."

Statutes of California, 1951, Regular Session 1951, Chapter 1736, Volume 2, pages 4140, 4141.

California Code of Civil Procedure Section 1174 provides:

"If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the findings of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceedings be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement if the notice required by Section 1161 of the Code states the election of the landlord to declare the forfeiture thereof, but if such notice does not so state such election, the lease or agreement shall not be forfeited.

"The jury or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible

or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent. Judgment against the defendant guilty of the forcible entry, or the forcible or unlawful detainer may be entered in the discretion of the court either for the amount of the damages and the rent found due, or for three times the amount so found. . . .

"A plaintiff, having obtained a writ of restitution of the premises pursuant to an action for unlawful detainer, shall be entitled to have the premises restored to him by officers charged with enforcement of such writs. The enforcing officer shall serve such writ promptly upon payment of reasonable costs of service. If the tenant does not vacate the premises within five days from the date of service of such writ, the enforcing officer shall remove the tenant from the premises and place the plaintiff in possession thereof. . . ."

Statutes of California, 1968, Regular Session 1968, Chapter 102, Volume 1, pages 315, 316.

California Rules of Court Rule 63 provides:

"(a) The superior court on application of a party or on its own motion may certify that the transfer of a case to the Court of Appeal appears necessary to secure uniformity of decision or to settle important questions of law. Such certification may be made by a majority of the judges of the appellate department, by the judge hearing the appeal. When there was a trial in the superior court, the judge who tried the case may make such certification. If any judge of the appellate department who participated in the decision is unable to act on the certification, then a judge designated or

assigned to the appellate department by the Chairman of the Judicial Council may act in his place. If the judge who heard the appeal or tried the case is unable to act, then the certification may be made by a judge designated by the presiding judge, or if there be no presiding judge, by any judge of the court.

"(b) Any party may apply to the superior court for the certification of a case after judgment in that court. If there was no trial in the Superior Court such application shall be served and filed before the judgment on appeal becomes final as to that court and may be included in any petition for rehearing. . . ."

Rule 63. Certification, C. 2d 10, 11, 12; 65 C. 2d 12.

California Rules of Court, Rule 107 provides:

"(a) At any time before a judgment of an appellate department becomes final, as hereinafter provided, it may vacate such judgment and order a rehearing.

"(b) Unless a rehearing shall be so ordered, every judgment of an appellate department shall become final as follows:

"(1) Upon the expiration of seven days after the same shall have been pronounced, unless one or more petitions for a rehearing shall have been filed within said period of time;

"(2) If one or more petitions for a rehearing shall have been filed within said time, then upon the expiration of 30 days after such judgment shall have been pronounced, if such rehearing shall not meanwhile have been granted, or upon the denial of all such petitions if all shall be sooner denied.

"(3) Where the judgment is modified before it becomes final, as above provided, the period specified herein begins to run anew, as of the date of modification; but a change of the opinion without modification of the judgment does not postpone the time when the judgment becomes final.

"(c) A petition for a rehearing must be served on all adverse parties before filing, and filed within seven days after the judgment shall have been pronounced, and shall not be filed unless accompanied by due proof of such service. . . ."

Rule 7. Rehearing and finality of judgments, 26 C. 2d 6, 7.

California Rules of Court, Rule 122 (a) and (b) provides:

"(a) Except as otherwise specially provided by law, a notice of appeal shall be filed within 30 days after the date of mailing notice of entry of judgment by the clerk of the court pursuant to section 664.5 or section 667a of the Code of Civil Procedure, or within 30 days after the date of service of written notice of entry of judgment by any party upon the party filing the notice of appeal, or within 90 days after the date of entry of judgment, whichever is earliest, unless the time is extended as provided in rule 123.

"(b) For the purposes of this rule: (1) The date of entry of a judgment shall be the date of its entry in the minute book or docket unless the entry expressly directs that a written order be prepared, signed and filed, in which case the date of entry shall be the date of filing of the signed order. (2) The date of entry of an order which is not entered in the minutes or

docket shall be the date of filing of the order signed by the court. . . ."

Rule 122. Time of filing Notice of Appeal, 61 C. 2d 4;

Rule 122. Time of filing Notice of Appeal, 63 C. 2d 4;

Rule 2. Time of filing Notice of Appeal, 40 C. 2d 25.

California Rules of Court, Rule 127(a) provides: "(a) If, in lieu of a reporter's transcript, the appellant desires to set forth the oral proceedings by a settled statement, he shall serve and file a notice so stating within 10 days after filing the notice of appeal. . . ."

Rule 7. Settlement of Statement or Transcript, 26 C. 2d 28.

California Rules of Court, Rule 501, provides:

(a) "The word 'papers' as used in this rule includes all documents, except exhibits or copies of documents, which are offered for filing in any case in the municipal courts; provided, however, that it does not include printed forms furnished by the clerks of the courts.

"(b) All papers shall be typewritten or printed in type not smaller than pica size on opaque, unglazed white paper of standard quality not less than 13-pound weight, 8½ by 13 inches in size. Only one side of the paper shall be used, and the lines on each page shall be double-spaced and numbered consecutively; provided, however, descriptions of real property may be single-spaced and printed forms of corporate surety bonds and un-

dertakings may be single-spaced and have unnumbered lines if they comply generally with the space requirements of subdivision (c) of this rule. The pages shall be numbered consecutively at the bottom. All papers shall consist entirely of original pages without riders, and shall be firmly bound together at the top. Exhibits may be fastened to pages of the specified size and, when prepared by a machine copying process, shall be equal to typewritten material in legibility and permanency of image.

"(c) The first page of all papers shall be in the following form:

"(1) In the space commencing with line 1, to the left of the center of the page, the name, office address, or, if none, the residence address, and telephone number of the attorney for the party in whose behalf the paper is presented, or of the party if he is appearing in person; provided, however, the name, office address and telephone number of the attorney printed on the page shall be sufficient.

"(2) The space between lines 1 and 7 to the right of the center of the page shall be left blank for the use of the clerk.

"(3) On or below line 8, the title of the court.

"(4) Below the title of the court, in the space to the left of the center of the page, the title of the case.

"(5) To the right of and opposite the title, the number of the case.

"(6) Immediately below the number of the case, the nature of the paper, and on all complaints and petitions, the character of the action or proceeding.

"(d) Additions, deletions or interlineations shall be initialed by the clerk or the judge at the time of filing. All copies served shall conform to the original filed, including the numbering of lines, pagination, additions, deletions and interlineations.

"(e) Each separately stated cause of action, count, defense and counterclaim shall be separately numbered.

"(f) The clerk of the court shall not accept for filing or file any papers which do not comply with this rule; provided, however, that for good cause shown, the court may permit the filing of papers which do not comply herewith."

Rule 1. Form of papers presented for filing, 40 C. 2d 1;

Rule 501. Form of papers presented for filing, 61 C. 2d 19, 20.

"Perhaps no word in any language is so well understood and yet so imperfectly defined as the word 'home'. Interpretation of the concept has occupied the minds of jurists and engaged the imagination of poets in all ages, but none has given it full expression in language harmonious at once in truth and grace. Certain it is, however, that no definition can be complete which omits the element of sentiment, that quality, intangible and elusive though it may be, which nevertheless in the common understanding of a man serves most readily to identify his home and to distinguish it from every other place—that lifts it from an adjunct of living to an object of life—that goes beyond the law's language and animates the image with the breath of family affection and the gentle warmth of hospitality shared with friends, and endows it with comfort in affliction, with respite from care, and the promise of pleasant repose."

State v. Mueller (1964), 388 S.W. 2d 53, 57.